

**SECTION C
GENERAL TERMS & CONDITIONS**

THE STATE OF TEXAS

BID #LC-9900-027-13714

ORDINANCE # 2003-352

COUNTY OF HARRIS

CONTRACT # 54884

I. PARTIES

A. Address

THIS AGREEMENT FOR RUNWAY RUBBER REMOVAL, FRICTION TESTING, AND MISCELLANEOUS AIRFIELD PAINT REMOVAL SERVICES FOR HOUSTON AIRPORT SYSTEM

("Agreement") is made on the Countersignature Date between the **CITY OF HOUSTON, TEXAS** ("City"), a municipal corporation and **CKS HYDRO SERVICES, INC.** ("Contractor or Vendor"), a corporation doing business in Texas.

The initial addresses of the parties, which one party may change by giving written notice to the other party, are as follows:

City

Contractor

City Purchasing Agent for Director
of Houston Airport System Department
City of Houston
P.O. Box 1562
Houston, Texas 77251

CKS Hydro Services, Inc.
P.O. Box 916
Ocean Springs, Mississippi
Phone: (228) 872-2446
Fax: (228) 875-4747

The Parties agree as follows:

B. Table of Contents

This Agreement consists of the following sections:

TABLE OF CONTENTS

	<u>Page No.</u>
I. PARTIES	1
A. Address	1
B. Table of Contents	1
C. Parts Incorporated	3
D. Controlling Parts	3
E. Definitions	3
F. Signatures	4
II. DUTIES OF CONTRACTOR	5
A. Scope of Services	5
B. RELEASE	5
C. INDEMNIFICATION	5
D. INDEMNIFICATION PROCEDURES	6
E. Insurance	7
F. Warranties	8
G. Licenses and Permits	9
H. Compliance with Equal Opportunity Ordinance	9
I. MWBE Compliance	9
J. Drug Abuse Detection and Deterrence	9
K. Environmental Laws	9
L. Contractor's Performance	11
M. Payment of Employees and Subcontractors	11
III. DUTIES OF CITY	12
A. Payment Terms	12
B. Taxes	12
C. Method of Payment	12
D. Method of Payment - Disputed Payments	12
E. Limit of Appropriation	12
F. Changes	14
IV. TERM AND TERMINATION	16
A. Contract Term	16
B. Notice to Proceed	16
C. Renewals	16
D. Time Extensions	16
E. Termination for Convenience by the City	16
F. Termination for Cause by City	17
G. Termination for Cause by Contractor	18
H. Termination for Cause - Termination by City for Health and Safety	18
I. Removal of Contractor Owned Equipment and Materials	18

V. MISCELLANEOUS	19
A. Independent Contractor.....	19
B. Force Majeure	19
C. Severability	19
D. Entire Agreement.....	20
E. Written Amendment.....	20
F. Applicable Laws	20
G. Notices	20
H. Non-Waiver.....	20
I. Inspections and Audits.....	21
J. Enforcement.....	21
K. Ambiguities.....	21
L. Survival.....	21
M. Parties In Interest	21
N. Successors and Assigns.....	21
O. Business Structure and Assignments	21
P. Remedies Cumulative	22

EXHIBITS

- A. DEFINITIONS
- B. SCOPE OF SERVICES
- C. EQUAL EMPLOYMENT OPPORTUNITY
- D. MWBE SUBCONTRACT TERMS
- E. DRUG POLICY COMPLIANCE AGREEMENT
- F. CERTIFICATION OF NO SAFETY IMPACT POSITIONS
- G. DRUG POLICY COMPLIANCE DECLARATION
- H. FEES AND COSTS

C. Parts Incorporated

The above described sections and exhibits are incorporated into this Agreement.

D. Controlling Parts

If a conflict among the sections or exhibits arises the Exhibits control over the Sections.

E. Definitions

Certain terms used in this Agreement are defined in Exhibit "A".

F. Signatures

The Parties have executed this Agreement in multiple copies, each of which is an original.

ATTEST/SEAL (if a corporation):

CKS HYDRO Services, Inc.

WITNESS (if not a corporation):

By: M Stanfield

Name: M Stanfield

Title: President

By: Robert Stanfield

Name: Robert Stanfield

Title: V-President

Federal Tax ID Number: 74-2593385

ATTEST/SEAL:

[Signature]

City Secretary

CITY OF HOUSTON, TEXAS

Signed by:

[Signature]
Mayor

APPROVED:

[Signature]
City Purchasing Agent

COUNTERSIGNED BY:

[Signature]
[Signature]
City Controller

DATE COUNTERSIGNED:

4-18-03

This Contract has been reviewed as to form by the undersigned legal assistant and has been found to meet established Legal Department criteria. The Legal Department has not reviewed the content of these documents.

2/20/2003
Date

[Signature]
Legal Assistant

II. DUTIES OF CONTRACTOR

A. Scope of Services

In consideration of the payments specified in this Agreement, Contractor shall provide all labor, material, and supervision necessary to perform the services described in Exhibit "B."

B. RELEASE

CONTRACTOR AGREES TO AND SHALL RELEASE THE CITY, ITS AGENTS, EMPLOYEES, OFFICERS, AND LEGAL REPRESENTATIVES (COLLECTIVELY THE CITY) FROM ALL LIABILITY FOR INJURY, DEATH, DAMAGE, OR LOSS TO PERSONS OR PROPERTY SUSTAINED IN CONNECTION WITH OR INCIDENTAL TO PERFORMANCE UNDER THIS AGREEMENT, EVEN IF THE INJURY, DEATH, DAMAGE, OR LOSS IS CAUSED BY THE CITY'S SOLE OR CONCURRENT NEGLIGENCE AND/OR THE CITY'S STRICT PRODUCTS LIABILITY OR STRICT STATUTORY LIABILITY.

C. INDEMNIFICATION

CONTRACTOR AGREES TO AND SHALL DEFEND, INDEMNIFY, AND HOLD THE CITY, ITS AGENTS, EMPLOYEES, OFFICERS, AND LEGAL REPRESENTATIVES (COLLECTIVELY "THE CITY") HARMLESS FOR ALL CLAIMS, CAUSES OF ACTION, LIABILITIES, FINES, AND EXPENSES (INCLUDING, WITHOUT LIMITATION, ATTORNEY'S FEES, COURT COSTS, AND ALL OTHER DEFENSE COSTS AND INTEREST) FOR INJURY, DEATH, DAMAGE, OR LOSS TO PERSONS OR PROPERTY SUSTAINED IN CONNECTION WITH OR INCIDENTAL TO PERFORMANCE UNDER THIS AGREEMENT INCLUDING, WITHOUT LIMITATION, THOSE CAUSED BY:

- (1) CONTRACTOR'S AND/OR ITS AGENTS', EMPLOYEES', OFFICERS', DIRECTORS', CONTRACTORS', OR SUBCONTRACTORS' (COLLECTIVELY IN NUMBERED PARAGRAPHS 1-3, "CONTRACTOR") ACTUAL OR ALLEGED NEGLIGENCE OR INTENTIONAL ACTS OR OMISSIONS;**

- (2) THE CITY'S AND CONTRACTOR'S ACTUAL OR ALLEGED CONCURRENT NEGLIGENCE, WHETHER CONTRACTOR IS IMMUNE FROM LIABILITY OR NOT; AND
- (3) THE CITY'S AND CONTRACTOR'S ACTUAL OR ALLEGED STRICT PRODUCTS LIABILITY OR STRICT STATUTORY LIABILITY, WHETHER CONTRACTOR IS IMMUNE FROM LIABILITY OR NOT.

CONTRACTOR SHALL DEFEND, INDEMNIFY, AND HOLD THE CITY HARMLESS DURING THE TERM OF THIS CONTRACT AND FOR FOUR YEARS AFTER THE CONTRACT TERMINATES. CONTRACTOR'S INDEMNIFICATION IS LIMITED TO \$500,000.00 PER OCCURRENCE. CONTRACTOR SHALL NOT INDEMNIFY THE CITY FOR THE CITY'S SOLE NEGLIGENCE.

D. INDEMNIFICATION PROCEDURES

- (1) Notice of Claims. If the City or Contractor receives notice of any claim or circumstances which could give rise to an indemnified loss, the receiving party shall give written notice to the other party within 10 days. The notice must include the following:
 - (a) a description of the indemnification event in reasonable detail,
 - (b) the basis on which indemnification may be due, and the anticipated amount of the indemnified loss.

This notice does not stop or prevent the City from later asserting a different basis for indemnification or a different amount of indemnified loss than that indicated in the initial notice. If the City does not provide this notice within the 10 day period, it does not waive any right to indemnification except to the extent that Contractor is prejudiced, suffers loss, or incurs expense because of the delay.

- (2) Defense of Claims
 - (a) Assumption of Defense. Contractor may assume the defense of the claim at its own expense with counsel chosen by it that is reasonably satisfactory to the City. Contractor shall then control the defense and any negotiations to settle the claim. Within 10 days after

receiving written notice of the indemnification request, Contractor must advise the City as to whether or not it will defend the claim. If Contractor does not assume the defense, the City shall assume and control the defense, and all defense expenses constitute an indemnification loss.

- (b) Continued Participation. If Contractor elects to defend the claim, the City may retain separate counsel to participate in (but not control) the defense and to participate in (but not control) any settlement negotiations. Contractor may settle the claim without the consent or agreement of the City, unless it (i) would result in injunctive relief or other equitable remedies or otherwise require the City to comply with restrictions or limitations that adversely affect the City, (ii) would require the City to pay amounts that Contractor does not fund in full, (iii) would not result in the City's full and complete release from all liability to the plaintiffs or claimants who are parties to or otherwise bound by the settlement.

E. Insurance

Contractor shall maintain in effect certain insurance coverage and shall furnish certificates of insurance, in duplicate form, before beginning its performance under this Agreement. All policies except Professional Liability and Worker's Compensation must name the City as an additional insured. The issuer of any policy (1) shall have a Certificate of Authority to transact insurance business in Texas or (2) shall be an eligible non-admitted insurer in the State of Texas and have a Best's rating of at least B+ and a Best's Financial Size Category of Class VI or better, according to the most current edition Best's Key Rating Guide. Contractor shall maintain the following insurance coverages in the following amounts:

- (1) Commercial General Liability insurance including Contractual Liability insurance:

\$500,000 per occurrence; \$1,000,000 aggregate

- (2) Worker's Compensation including Broad Form All States endorsement:

Statutory amount

- (3) Automobile Liability insurance

\$1,000,000 combined single limit per occurrence

Defense costs are excluded from the face amount of the policy.

Aggregate Limits are per 12-month policy period unless otherwise indicated.

- (4) Employer's Liability

Bodily injury by accident \$100,000 (each accident)

Bodily injury by disease \$100,000 (policy limit)

Bodily injury by disease \$100,000 (each employee)

All insurance policies must require on their face, or by endorsement, that the insurance carrier waives any rights of subrogation against the City, and that it shall give 30 days written notice to the City before they may be canceled, materially changed, or non-renewed. Within the 30 day period, Contractor shall provide other suitable policies in lieu of those about to be canceled, materially changed, or non-renewed so as to maintain in effect the required coverage. If Contractor does not comply with this requirement, the Director, at his or sole discretion, may:

- (1) immediately suspend Contractor from any further performance under this Agreement and begin procedures to terminate for default, or
- (2) purchase the required insurance with City funds and deduct the cost of the premiums from amounts due to Contractor under this Agreement.

F. Warranties

Contractor represents and warrants that it shall perform all work in a good and workmanlike manner, meeting the standards of quality prevailing in Harris County, Texas for work of this kind. Contractor shall perform all work using trained and skilled persons having substantial experience performing the work required under this Agreement.

With respect to any parts and goods furnished by it, Contractor warrants:

- (1) that all items are free of defects in title, material, and workmanship,
- (2) that each item meets or exceeds the manufacturer's specifications and requirements for the equipment, structure, or other improvement in which the item is installed,
- (3) that each replacement item is new in accordance with original equipment manufacturer's specifications, and of a quality at least as good as the quality of the item which it replaces (when the replaced item was new), and
- (4) that no item or its use infringes any patent, copyright, or proprietary right.

G. Licenses and Permits

Contractor shall obtain and pay for all licenses, permits, and certificates required by any statute, ordinance, rule, or regulation.

H. Compliance with Equal Opportunity Ordinance

Contractor shall comply with the City's Equal Employment Opportunity Ordinance as set out in Exhibit "C."

I. MWBE Compliance

Contractor shall comply with the City's Minority and Women Business Enterprise ("MWBE") programs as set out in Chapter 15, Article V of the City of Houston Code of Ordinances. Contractor shall make good faith efforts to award subcontracts or supply agreements in at least 11% of the value of this Agreement to MWBEs. Contractor acknowledges that it has reviewed the requirements for good faith efforts on file with the City's Affirmative Action Division and will comply with them.

Contractor shall require written subcontracts with all MWBE subcontractors and shall submit all disputes with MWBEs to binding arbitration in Houston, Texas if directed to do so by the Affirmative Action Division Director. MWBE subcontracts must contain the terms set out in Exhibit "D." If Contractor is an individual person (as distinguished from a corporation, partnership, or other legal entity), and the amount of the subcontract is \$50,000 or less, the subcontract must also be signed by the attorneys of the respective parties.

J. Drug Abuse Detection and Deterrence

(1) It is the policy of the City to achieve a drug-free workforce and workplace. The manufacture, distribution, dispensation, possession, sale, or use of illegal drugs or alcohol by contractors while on City Premises is prohibited. Contractor shall comply with all the requirements and procedures set forth in the Mayor's Drug Abuse Detection and Deterrence Procedures for Contractors, Executive Order No. 1-31 ("Executive Order"), which is incorporated into this Agreement and is on file in the City Secretary's Office.

(2) Before the City signs this Agreement, Contractor shall file with the Contract Compliance Officer for Drug Testing ("CCODT"):

- (a) a copy of its drug-free workplace policy,
- (b) the Drug Policy Compliance Agreement substantially in the form set forth in Exhibit "D," together with a written designation of all safety impact positions and,

- (c) if applicable (e.g. no safety impact positions), the Certification of No Safety Impact Positions, substantially in the form set forth in Exhibit "E."

If Contractor files a written designation of safety impact positions with its Drug Policy Compliance Agreement, it also shall file every 6 months during the performance of this Agreement or on completion of this Agreement if performance is less than 6 months, a Drug Policy Compliance Declaration in a form substantially similar to Exhibit "F." Contractor shall submit the Drug Policy Compliance Declaration to the CCODT within 30 days of the expiration of each 6-month period of performance and within 30 days of completion of this Agreement. The first 6-month period begins to run on the date the City issues its Notice to Proceed or if no Notice to Proceed is issued, on the first day Contractor begins work under this Agreement.

(3) Contractor also shall file updated designations of safety impact positions with the CCODT if additional safety impact positions are added to Contractor's employee work force.

(4) Contractor shall require that its subcontractors comply with the Executive Order, and Contractor shall secure and maintain the required documents for City inspection.

K. Environmental Laws

Contractor shall comply with all rules, regulations, statutes, or orders of the Environmental Protection Agency ("EPA"), the Texas Natural Resource Conservation Commission ("TCEQ"), and any other governmental agency with the authority to promulgate environmental rules and regulations (Environmental Laws). Contractor shall promptly reimburse the City for any fines or penalties levied against the City because of Contractor's failure to comply.

Contractor shall not possess, use, generate, release, discharge, store, dispose of, or transport any Hazardous Materials on, under, in, above, to, or from the site except in strict compliance with the Environmental Regulations. "Hazardous Materials" means any substances, materials, or wastes that are or become regulated as hazardous or toxic substances under any applicable federal, state, or local laws, regulations, ordinances, or orders. Contractor shall not deposit oil, gasoline, grease, lubricants or any ignitable or hazardous liquids, materials, or substances in the City's storm sewer system or sanitary sewer system or elsewhere on City Property in violation of the Environmental Laws.

L. Contractor's Performance

Contractor shall make citizen satisfaction a priority in providing services under this Agreement. Contractor shall train its employees to be customer service-oriented and to positively and politely interact with citizens when performing contract services. Contractor's employees shall be clean, courteous, efficient, and neat in appearance and committed to offering the highest quality of service to the public. If, in the Director's opinion, Contractor is not interacting in a positive and polite manner with citizens, he or she shall direct Contractor to take all remedial steps to conform to these standards.

M. Payment of Employees and Subcontractors

Contractor shall make timely payments in accordance with applicable state and federal law to all persons and entities supplying labor, materials or equipment for the performance of this Agreement including Contractor's employees.

Failure of Contractor to pay its employees as required by law shall constitute a default under this contract for which the Contractor and its surety shall be liable on Contractor's performance bond if Contractor fails to cure the default as provided under this Agreement.

Contractor shall defend and indemnify the City from any claims or liability arising out of Contractor's failure to pay its subcontractors as required by law. Contractor shall submit disputes relating to payment of M/WBE subcontractors to arbitration in the same manner as any other disputes under the M/WBE subcontracted.

III. DUTIES OF CITY

A. Payment Terms

The City shall pay and Contractor shall accept fees at the unit prices provided in Exhibit H for all services rendered and the Deliverables furnished by Contractor. The fees must only be paid from Allocated Funds, as provided below.

Any quantities of services or Deliverable shown in any part of this contract or its exhibits are estimated only and are not any guarantee that the City will not purchase more or less of those services or Deliverables. The City will pay only for the services or Deliverables actually ordered and only at the unit prices set out.

B. Taxes

The City is exempt from payment of Federal Excise and Transportation Tax and Texas Limited Sales and Use Tax. Contractor's invoices to the City must not contain assessments of any of these taxes. The Director will furnish the City's exemption certificate and federal tax identification number to Contractor if requested.

C. Method of Payment

The City shall pay Contractor on the basis of invoices submitted by Contractor and approved by the Director, showing the specific tasks completed in the preceding month and the corresponding prices. The City shall make payments to Contractor at its address for notices within 30 days of receipt of an approved invoice.

D. Method of Payment - Disputed Payments

If the City disputes any items in an invoice Contractor submits for any reason, including lack of supporting documentation, the Director shall temporarily delete the disputed item and pay the remainder of the invoice. The Director shall promptly notify Contractor of the dispute and request remedial action. After the dispute is settled, Contractor shall include the disputed amount on a subsequent regularly scheduled invoice or on a special invoice for the disputed item only.

E. Limit of Appropriation

- (1) The City's duty to pay money to Contractor under this Agreement is limited in its entirety by the provisions of this Section.

(2) In order to comply with Article II, Sections 19 and 19a of the City's Charter and Article XI, Section 5 of the Texas Constitution, the City has appropriated and allocated the sum of \$218,000.00 to pay money due under this Agreement (the "Original Allocation"). The executive and legislative officers of the City, in their discretion, may allocate supplemental funds for this Agreement, but they are not obligated to do so. Therefore, the parties have agreed to the following procedures and remedies:

(3) The City makes a supplemental allocation by sending a notice signed by the Director and the City Controller to Contractor and where appropriated, approved by motion, or ordinance of City Council in substantially the following form:

"NOTICE OF SUPPLEMENTAL ALLOCATION OF FUNDS"

TO: [Name of Contractor]

FROM: City of Houston, Texas (the "City")

DATE: [Date of notice]

SUBJECT: Supplemental allocation of funds for the purpose of the "[title of this Agreement]" between the City and (name of Contractor) countersigned by the City Controller on (Date of Countersignature) (the "Agreement").

I, (name of City Controller), City Controller of the City of Houston, certify that the supplemental sum of \$_____, upon the request of the below-signed Director, has been allocated for the purposes of the Agreement out of funds appropriated for this purpose by the City Council of the City of Houston. This supplemental allocation has been charged to such appropriation.

The aggregate of all sums allocated for the purpose of such Agreement, including the Original Allocation, and all supplemental allocations (including this one), as of the date of this notice, is \$_____.

SIGNED:

(Signature of the City Controller)

City Controller of the City

REQUESTED:

(Signature of the Director)

Director

- (4) The Original Allocation plus all supplemental allocations are the Allocated Funds. The City shall never be obligated to pay any money under this Agreement in excess of the Allocated Funds. Contractor must assure itself that sufficient allocations have been made to pay for services it provides. If Allocated Funds are exhausted, Contractor's only remedy is suspension or termination of its performance under this Agreement and it has no other remedy in law or in equity against the City and no right to damages of any kind.

F. Changes

- (1) At any time during the Agreement Term, the Director or City Purchasing Agent may issue a Change Order to increase or decrease the scope of services or change plans and specifications, as he or she may find necessary to accomplish the general purposes of this Agreement. Contractor shall furnish the services or deliverables in the Change Order in accordance with the requirements of this Agreement plus any special provisions, specifications, or special instructions issued to execute the extra work.
- (2) The Director or City Purchasing Agent will issue the Change Order in substantially the following form:

CHANGE ORDER

TO: [Name of Contractor]

FROM: City of Houston, Texas (the "City")

DATE: [Date of Notice]

SUBJECT: Change Order under the Agreement between the City and [Name of Contractor] countersigned by the City Controller on [Date of countersignature of the Agreement]

Subject to all terms and conditions of the Agreement, the City requests that Contractor provide the following:

[Here describe the additions to or changes to the equipment or services and the Change Order Charges applicable to each.]

Signed:

[Signature of Director or City Purchasing Agent]

- (3) The Director or City Purchasing Agent may issue more than one Change Order, subject to the following limitations:
 - (a) Council expressly authorizes the Director or City Purchasing Agent, to approve a Change Order of up to \$25,000. A Change Order of more than \$25,000 over the approved contract amount must be approved by the City Council.
 - (b) If a Change Order describes items that Contractor is otherwise required to provide under this Agreement, the City is not obligated to pay any additional money to Contractor.
 - (c) The Total of all Change Orders issued under this section may not increase the Original Agreement amount by more than 25%.
- (4) Whenever Contractor receives a Change Order, Contractor shall furnish all material, equipment, and personnel necessary to perform the work described in the Change Order. Contractor shall complete the work within the time prescribed. If no time for completion is prescribed, Contractor shall complete the work within a reasonable time. If the work described in any Change Order causes an unavoidable delay in any other work Contractor is required to perform under this Agreement, Contractor may request a time extension for the completion of the work. The City Purchasing Agent's or Director's decision regarding a time extension is final.
- (5) A product or service provided under a Change Order is subject to inspection, acceptance, or rejection in the same manner as the work described in the Original Agreement, and is subject to the terms and conditions of the Original Agreement as if it had originally been a part of the Agreement.
- (6) Change Orders are subject to the Allocated Funds provisions of this Agreement.

IV. TERM AND TERMINATION

A. Contract Term

This Agreement is effective on the Countersignature Date and expires three (3) years after the date specified in the Notice to Proceed unless sooner terminated according to the terms of this Agreement.

B. Notice to Proceed

Contractor shall begin performance under this Agreement on the date specified in a Notice to Proceed from the Director or City Purchasing Agent.

C. Renewals

If sufficient funds are allocated, the Director or City Purchasing Agent, at his or her sole discretion, may make a request to Contractor to renew this Agreement for up to two additional 1-year option periods, upon at least 30 days' written notice before expiration of the initial term, or first option period, as applicable. Any renewal, pursuant to this Section, shall be upon the same terms and conditions of the Agreement.

D. Time Extensions

If Department requests an extension of time to complete its performance, then the Director or City Purchasing Agent may, in his or her sole discretion, extend the time so long as the extension does not exceed 90 days. The extension must be in writing but does not require amendment of this Agreement. Contractor is not entitled to damages for delay(s) regardless of the cause of the delay(s).

E. Termination for Convenience by the City

The Director or City Purchasing Agent may terminate this Agreement at any time by giving 30 days written notice to Contractor. The City's right to terminate this Agreement for convenience is cumulative of all rights and remedies which exist now or in the future.

On receiving the notice, Contractor shall, unless the notice directs otherwise, immediately discontinue all services under this Agreement and cancel all existing orders and subcontracts that are chargeable to this Agreement. As soon as practicable after receiving the termination notice, Contractor shall submit an invoice showing in detail the services performed under this Agreement up to the termination date. The City shall then pay the fees to Contractor for services actually performed, but not already paid for, in the same manner as prescribed in Section III unless the fees exceed the allocated funds remaining under this Agreement.

TERMINATION OF THIS AGREEMENT AND RECEIPT OF PAYMENT FOR SERVICES RENDERED ARE CONTRACTOR'S ONLY REMEDIES FOR THE CITY'S TERMINATION FOR CONVENIENCE, WHICH DOES NOT CONSTITUTE A DEFAULT OR BREACH OF THIS AGREEMENT. CONTRACTOR WAIVES ANY CLAIM (OTHER THAN ITS CLAIM FOR PAYMENT AS SPECIFIED IN THIS SECTION), IT MAY HAVE NOW OR IN THE FUTURE FOR FINANCIAL LOSSES OR OTHER DAMAGES RESULTING FROM THE CITY'S TERMINATION FOR CONVENIENCE.

F. Termination for Cause by City

If Contractor defaults under this Agreement, the Director or City Purchasing Agent may either terminate this Agreement or allow Contractor to cure the default as provided below. The City's right to terminate this Agreement for Contractor's default is cumulative of all rights and remedies which exist now or in the future.

Default by Contractor occurs if:

- (1) Contractor fails to perform any of its duties under this Agreement;
- (2) Contractor becomes insolvent;
- (3) all or a substantial part of Contractor's assets are assigned for the benefit of its creditors; or
- (4) a receiver or trustee is appointed for Contractor.

If a default occurs, the Director or City Purchasing Agent may, but is not obligated to, deliver a written notice to Contractor describing the default and the termination date. The Director or City Purchasing Agent, at his or her sole option, may extend the termination date to a later date. If the Director or City Purchasing Agent allows Contractor to cure the default and Contractor does so to the City Purchasing Agent's or Director's satisfaction before the termination date, then the termination is ineffective. If Contractor does not cure the default before the termination date, then the Director or City Purchasing Agent may terminate this Agreement on the termination date, at no further obligation of the City.

To effect final termination, the Director or City Purchasing Agent must notify Contractor in writing. After receiving the notice, Contractor shall, unless the notice directs otherwise, immediately discontinue all services under this Agreement, and promptly cancel all orders or subcontracts chargeable to this Agreement.

G. Termination for Cause by Contractor

Contractor may terminate its performance under this Agreement only if the City defaults and fails to cure the default after receiving written notice of it. Default by the City occurs if the City fails to perform one or more of its material duties under this Agreement. If a default occurs and Contractor wishes to terminate the Agreement, then Contractor must deliver a written notice to the Director describing the default and the proposed termination date.

The date must be at least 30 days after the Director receives notice. Contractor, at its sole option, may extend the proposed termination date to a later date. If the City cures the default before the proposed termination date, then the proposed termination is ineffective. If the City does not cure the default before the proposed termination date, then Contractor may terminate its performance under this Agreement on the termination date.

H. Termination for Cause - Termination by City for Health and Safety

If City Council determines that the public health, safety, and welfare of the City require termination of this Agreement, then the Agreement is terminated immediately upon that determination by City Council.

I. Removal of Contractor Owned Equipment and Materials

Upon expiration, or termination of this Agreement, Contractor is permitted ten (10) days within which to remove contractor-owned material and equipment from the City's premises. The City shall make such material and equipment readily available to Contractor. The time period may be extended upon approval by the Director. The City reserves the right to deny any extension of time.

V. MISCELLANEOUS

A. Independent Contractor

Contractor shall perform its obligations under this Agreement as an independent contractor and not as an employee of the City.

B. Force Majeure

1. Timely performance by both parties is essential to this Agreement. However, neither party is liable for delays or other failures to perform its obligations under this Agreement to the extent the delay or failure is caused by Force Majeure. Force Majeure means fires, floods, explosions, and other acts of God, war, terrorist acts, riots, court orders, and the acts of superior governmental or military authority.
2. This relief is not applicable unless the affected party does the following:
 - (a) uses due diligence to remove the Force Majeure as quickly as possible; and
 - (b) provides the other party with prompt written notice of the cause and its anticipated effect.
3. The City may perform contract functions itself or contract them out during periods of Force Majeure. Such performance does not constitute a default or breach of this Agreement by the City.
4. If the Force Majeure continues for more than 30 days, the City Purchasing Agent or Director upon written authorization by the City Purchasing Agent may terminate this Agreement by giving 30 days' written notice to Contractor. This termination is not a default or breach of this Agreement. CONTRACTOR WAIVES ANY CLAIM IT MAY HAVE FOR FINANCIAL LOSSES OR OTHER DAMAGES RESULTING FROM THE TERMINATION EXCEPT FOR AMOUNTS DUE UNDER THE AGREEMENT AT THE TIME OF THE TERMINATION.

C. Severability

If any part of this Agreement is for any reason found to be unenforceable, all other parts remain enforceable unless the result materially prejudices either party.

D. Entire Agreement

This Agreement merges the prior negotiations and understandings of the Parties and embodies the entire agreement of the Parties. No other agreements, assurances, conditions, covenants (express or implied), or other terms of any kind exist between the Parties regarding this Agreement.

E. Written Amendment

Unless otherwise specified elsewhere in this Agreement, this Agreement may be amended only by written instrument executed on behalf of the City (by authority of an ordinance duly adopted by the City Council) and Contractor. The Director is only authorized to perform the functions specifically delegated to him or her in this Agreement.

F. Applicable Laws

This Agreement is subject to the laws of the State of Texas, the City Charter and Ordinances, the laws of the federal government of the United States, and all rules and regulations of any regulatory body or officer having jurisdiction.

Venue for any litigation relating to this Agreement is Harris County, Texas.

G. Notices

All notices required or permitted by this Agreement must be in writing and are deemed delivered on the earlier of the date actually received or the third day following: (1) deposit in a United States Postal Service post office or receptacle; (2) with proper postage (certified mail, return receipt requested); and (3) addressed to the other party at the address set out in the preamble of this Agreement or at such other address as the receiving party designates by proper notice to the sending party.

H. Non-Waiver

If either party fails to require the other to perform a term of this Agreement, that failure does not prevent the party from later enforcing that term and all other terms. If either party waives the other's breach of a term, that waiver does not waive a later breach of this Agreement.

An approval by the Director, or by any other employee or agent of the City, of any part of Contractor's performance does not waive compliance with this Agreement or establish a standard of performance other than that required by this Agreement and by law. The Director is not authorized to vary the terms of this Agreement.

I. Inspections and Audits

City representatives may perform, or have performed, (1) audits of Contractor's books and records, and (2) inspections of all places where work is undertaken in connection with this Agreement. Contractor shall keep its books and records available for this purpose for at least 3 years after this Agreement terminates. This provision does not affect the applicable statute of limitations.

J. Enforcement

The City Attorney or his or her designee may enforce all legal rights and obligations under this Agreement without further authorization. Contractor shall provide to the City Attorney all documents and records that the City Attorney requests to assist in determining Contractor's compliance with this Agreement, with the exception of those documents made confidential by federal or State law or regulation.

K. Ambiguities

If any term of this Agreement is ambiguous, it shall not be construed for or against any party on the basis that the party did or did not write it.

L. Survival

Contractor shall remain obligated to the City under all clauses of this Agreement that expressly or by their nature extend beyond the expiration or termination of this Agreement, including but not limited to, the indemnity provisions.

M. Parties In Interest

This Agreement does not bestow any rights upon any third party, but binds and benefits the City and Contractor only.

N. Successors and Assigns

This Agreement binds and benefits the Parties and their legal successors and permitted assigns; however, this provision does not alter the restrictions on assignment and disposal of assets set out in the following paragraph. This Agreement does not create any personal liability on the part of any officer or agent of the City.

O. Business Structure and Assignments

Contractor shall not assign this Agreement at law or otherwise or dispose of all or substantially all of its assets without the City Purchasing Agent's prior written consent. Nothing in this clause, however, prevents the

assignment of accounts receivable or the creation of a security interest under Section 9.406 (c) of the Texas Business & Commerce Code. In the case of such an assignment, Contractor shall immediately furnish the City with proof of the assignment and the name, telephone number, and address of the Assignee and a clear identification of the fees to be paid to the Assignee.

Contractor shall not delegate any portion of its performance under this Agreement without the City Purchasing Agent's prior written consent.

P. Remedies Cumulative

Unless otherwise specified elsewhere in this Agreement, the rights and remedies contained in this Agreement are not exclusive, but are cumulative of all rights and remedies which exist now or in the future. Neither party may terminate its duties under this Agreement except in accordance with its provisions.

EXHIBIT "A"

DEFINITIONS

As used in this Agreement, the following terms have the meanings set out below:

"Acceptable" means that proposed services, equipment of performance, meet or exceed the requirements of this Contract.

"Acceptance" shall be determined by the Authority and be established when the Authority determines that the unit of Work specified under the Contract Documents is complete and acceptable.

"Acceptable" Equivalent means any equipment, part or product that complies with existing industry standards governing its manufacture or use, and that is a functional equivalent of any equipment, part, product or specification described herein, or, which functionally satisfies an approved, negotiated or specified use made a part hereof.

"Agreement" means this contract between the Parties, including all exhibits, change orders, and any written amendments authorized by City Council and Contractor.

"Air Operations Area (AOA)" for the purpose of these specifications, the term air operations area shall mean any area of the airport used or intended to be used for the landing, takeoff, or surface maneuvering of aircraft. An air operations area shall include such paved and unpaved areas that are used or intended to be used for unobstructed movement of aircraft in addition to its associated runway, taxi-way or apron.

"Airport(s)" mean George Bush Intercontinental Airport/Houston (IAH), William P. Hobby Airport (HOU), and Ellington Field (EFD).

"Basic Services" mean those services described in Exhibit "A" of the Agreement.

"Business Days" mean all days of a calendar year except Saturdays, Sundays and City Council approved City holidays, unless Contractor receives written notice(s) from the Director on a preceding Thursday modifying the work days for the following week(s), in which case, the modified work days become Business Days only for the period of time designated in such notice.

"City" is defined in the preamble of this Agreement and includes its successors and assigns.

"City Purchasing Agent" is defined as the person or duly authorized successor, authorized in writing to act for the City. The term includes, except as otherwise provided in this Contract, the authorized representative of the City Purchasing Agent acting within the limits of delegated authority.

"Company or Contractor" the terms Company or Contractor shall mean the successful Bidder to whom the Authority awards this Contract.

"Contractor Administrator" means the representative of the Houston Airport System who is responsible for the administration for the Contract.

"Contract Award Notice" means the official notification substantiated by the Notice to Proceed issued by the City Purchasing Agent to the Contractor.

"Contract Charges" means charges that accrue during a given month as defined in Article III.

"Contract Term" is defined in Article IV.

"Contractor" is defined in the preamble of this Agreement and includes its successors and assigns.

"Countersignature Date" means the date this agreement is countersigned by the City Controller.

"Director" means the Directors of each of the Departments or the City Purchasing Agent for the City, or the person he or she designates.

"EFD" means Ellington Field.

"Effective Date" is defined as date contract is countersigned by the City Controller.

"Equipment" all machinery, together with the necessary supplies for upkeep and maintenance, and also all tools and apparatus necessary for the proper and acceptable completion of the specified Work.

Furnish except as otherwise defined in greater detail, the term "furnish" is used to mean supply and deliver to Project Site, ready for unloading, unpacking, assembly, installation, etc., as applicable in each instance.

"Governing Body" means the Mayor and City Council of the City of Houston.
HOU means William P. Hobby Airport.

"Houston Airport System (HAS)" means the property and facilities of the City of Houston Department of Aviation which include, but are not limited to, George Bush Intercontinental Airport/Houston (IAH), William P. Hobby Airport (HOU), Ellington Field (EFD), and the Houston Airport System Administration Buildings.

"IAH" means George Bush Intercontinental Airport/Houston.

"Lighting" a system of fixtures providing or controlling the light sources used on or near the airport or within the airport buildings. The field lighting included all luminous signals, markers, floodlights, and illuminating devices used on or near the airport or to aid in the operation of aircraft landing at, taking off from, or taxiing on the airport surface.

"Maintenance Facilities" mean the shop and office facilities provided to the Contractor by the City. Such facilities are provided at each of the Airports.

"Maintenance Service" means both Preventive Maintenance and Remedial Maintenance.

"Manufacturer" means the original manufacturer or producer of a part or component.

"Materials" any substance specified for use in the accomplishment of the Contract Work.

"Notice to Proceed" means a written communication from the City Purchasing Agent or Director to Contractor instructing Contractor to begin performance.

"OEM" means the Original Equipment Manufacturer.

"Other Service Request (OSR)" is the form used to request Other Work/Services within the scope of this Agreement.

"Other Work/Services" means those services described in Exhibit "A" as Other Work/Services and other services related to HVAC or specific Contract operations and maintenance services, other than Basic Services. Such services are only provided upon the Director's written request.

"Parties" mean all the entities set out in the Preamble who are bound by this Agreement.

"Pavement" the combined concrete surface, base course, and sub-base course, if any, considered as a single unit.

"PM" means Preventive Maintenance -maintenance that is scheduled either by run time or by the calendar, to ensure proper operation of systems and equipment with durability, reliability, efficiency, and safety as the principal objectives in accordance with current OEM requirements and recommendations.

"Provide" except as otherwise defined in greater detail, the term "provide" means furnish and install, complete, and ready for intended use, as applicable in each instance.

"RM" means Remedial Maintenance - repair of equipment and systems with parts, materials, and labor to restore performance to the designed function in the event of any breakdown or stoppage of equipment or system where the equipment or system is unable to perform its designed function. RM includes repairs and replacement of related components, parts, and appurtenances that have failed, no longer perform reliably, or have worn beyond safe tolerances.

"Repair" means to restore to good or sound working condition.

"Runway" the area on the airport prepared for the landing and takeoff of aircraft.

"Schedule" the planned periods of time the Contractor shall be allowed to perform Contract Work on the pavement as determined by the Authority and local airfield requirements.

"Taxiway" for the purpose of this document, the term taxiway means the portion of the Air Operations Area of an airport that has been designated by the Authority for movement of aircraft to and from the airport's runways and aircraft parking areas.

"Work" all services to be provided by the Contractor as defined by the specifications herein.

EXHIBIT "B"
SCOPE OF SERVICES

**RUNWAY RUBBER REMOVAL, FRICTION TESTING,
AND MISCELLANEOUS AIRFIELD PAINT REMOVAL SERVICES**

GENERAL

1.1 GENERAL

The item of work detailed in this specification is the testing of airfield pavements for coefficient of friction, removal of rubber deposits from airfield pavements, and miscellaneous airfield paint removal work. Work shall be performed for the Houston Airport System (HAS) at George Bush Intercontinental Airport/Houston (IAH), William P. Hobby Airport (HOU), and Ellington Field (EFD).

Contractor shall provide all labor, supervision, equipment, tools, transportation and materials to perform the work on an "as-needed" basis.

The unit price per square foot of rubber removal is inclusive of pre- and post- friction testing.

The contractor shall conduct its operation without damage to pavement surface and grooving, runway lights, joints, sealer, and kerf sealants. The integrity of the pavement grooving shall not be changed. The contractor shall be responsible for and shall repair any damage caused by its operation and at its own expense to the satisfaction of HAS. Should the equipment or procedures used to remove the runway rubber or paint appear to cause pavement surface damaged or cause it to become polished or deteriorated, HAS may at its discretion engage an independent agency to test and evaluate the resulting runway friction coefficient (RFC) or damage after rubber or paint removal is complete. If the test indicates significant damage or that the RFC of a newly cleaned area is less than 90% of that measured along the runway edge or on a surface that has not been exposed to aircraft tire rubber, or the removal process, the area cleaned will be rejected for payment. Further, the Contractor will be liable for all costs incurred by HAS for the evaluation, testing, and surface restoration.

If performance becomes unsatisfactory to HAS, the Contractor shall be directed to provide adequate personnel, supplies, equipment, or otherwise immediately correct the unsatisfactory conditions. Failure to comply may result in service credits or the cancellation of this Agreement. Some examples of unsatisfactory performance include, but are not limited to: failure to provide adequate or proper equipment, personnel, and supervision to properly complete the work in a timely manner; improper use of tools, equipment, or supplies; cutting, removing, or marring of the pavement surface or joints; or the failure to immediately clean and remove dislodged residue from adjacent pavement surfaces.

1.2 APPLICABLE SPECIFICATIONS

- A. Contractor's services shall be performed in accordance with Federal Aviation Administration (FAA) Advisory Circular (AC) 150/5320-12C "Measurement, Construction, and Maintenance of Skid-Resistant Airport Pavement Surfaces" or most current revision.
- B. The above referenced Advisory Circular is incorporated into this specification (Exhibit "L").
- C. Note: Although outlined in (FAA) Advisory Circular 150/5320/12C, the methods defined in section II, a-d listed below shall not be used.
 - 1. Removal by High Pressure Water
This method shall not be used.

2. Removal by Chemicals
Chemicals with a base of cresylic acid and a blend of benzene shall not be used.
3. High Velocity Impact Removal
This method shall not be used.
4. Mechanical Removal
This method shall not be used.

- D. The Contractor shall provide all barriers, lights, signs, flags, and flagging personnel necessary to establish an adequate work zone and control traffic in and around the work zone. The Contractor shall establish and maintain work zones as necessary throughout the period of the contract, prominently identifying potential hazards and dangers to personnel and traffic in or near the work area. As a minimum, the Contractor shall comply with FAA AC 150/5370-2 for temporary pavement closures on airfields.

Paint removal shall be by the same method as rubber removal, or by a method prescribed by HAS.

In case of any discrepancy between the referenced FAA Advisory Circular and this specification, the provisions of this specification shall govern.

2.0 SCOPE OF WORK

2.1 PERFORMANCE REQUIREMENTS FRICTION TESTING

- A. Pre- and post- friction testing is included in the unit price per square foot of rubber removal.
- B. Contractor shall perform friction tests on up to five runways per callout.
- C. Information recorded for each friction measurement shall include at least the following data:
 1. Airport name and runway number
 2. Distance from runway centerline
 3. Friction measurement time and date
 4. Type of measurement (calibration, dry, wet)
 5. Weather conditions
 6. MU values or equivalent
- D. Contractor will provide a copy of the recorded information to Airport Operations with a summary report of conditions of each runway friction levels noting areas of concern.

PERFORMANCE REQUIREMENTS FOR DERUBBERIZING

SPECIFIC METHOD: REMOVAL BY CHEMICALS

The removal of rubber deposits from Portland cement, asphaltic, and polymer asphaltic concrete pavements shall be accomplished exclusively with a derubberizer compound (biodegradable emulsifier/surfactant). The "Removal by Chemicals" method requires areas of pavement to be cleaned to be saturated by

derubberizer compound, allowed to soak, agitated, vacuumed free of compound and particulate, and water-rinsed with a maximum water pressure of 300 PSI.

Chemicals used must be EPA registered, and the contractor must meet current EPA guidelines and regulations, as applicable.

B. PERFORMANCE REQUIREMENTS DERUBBERIZING

1. Shall be in compliance with FAA AC 150/5320-12C.
2. It shall be the responsibility of the Contractor to thoroughly clean and flush the pavement area and remove all residues.
3. The work area shall be cleaned at the end of each work period, with a complete clean up of the entire job site at the end of each performance cycle. This clean up includes, but is not limited to the daily removal of all rubber or paint residue that has been dislodged from the pavement surfaces during the cleaning. All clean-up activities are part of the contract and shall be accomplished by the Contractor at no additional cost to HAS.
4. Contractor shall remove any mechanical debris resulting from the derubberizing operation from all pavements serviced. To ensure that the pavements are completely free of metallic debris, Contractor shall include a final sweep of pavements with a magnetic sweeper to remove all metal objects. Pavements will be inspected by Airport Operations for FAR Part 139 violations prior to returning such pavement to operational use.

C. Paint Removal Technical Requirements

1. Paint may be removed by sandblasting, shot blasting, or grinding. The use of water blasting is specifically excluded.
2. Painted markings equal to or greater than three feet wide must be removed at a minimum rate of 1000 square feet per pound.
3. Contractor's paint removal process shall expose a minimum of 85% of the pavement surface texture.
4. The determination of the 85 percent pavement surface texture exposure must be accomplished by the procedure describe in "COMPLIANCE TESTING" section below.
5. The HAS representative and the Contractor shall jointly inspect the work area before work commences. Any existing damage to the pavement systems must be documented at that time.

Equipment

1. The Contractor's equipment used in the removal process must remove paint without causing damage to pavement surfaces, joints or joint and crack seal material.
The Contractor shall furnish all necessary lighting. The Contractor shall direct or shade the lighting to prevent interference with aircraft, the Air Traffic Control tower and other airport operations.

Method of Operation

2. The Contractor shall ensure that any paint removal process is conducted in strict compliance with all local, state and Federal environmental statutes and regulations.

Compliance Testing

1. Compliance with the exposure of 85% of the pavement surface texture 100 percent of the cleaned area will be determined by testing within the designated work area.
2. A one square foot section of transparent material inscribed with a grid of 100 equal squares will be used as a tool for quantitative measure of the 85 percent exposure of surface texture requirement. Place the grid pattern on the pavement surface at random locations. Then count the squares which contain paint deposits. The number of squares containing paint deposits must not exceed 15 in each of the randomly selected locations.
3. Each work area designated for paint removal will be divided into a least four equal zones for the purposed of compliance testing. Within each zone, a minimum of seven random locations will be evaluated. At lease 85 percent of the randomly selected areas within each zone must meet the requirement described in this specification.
4. HAS will evaluate the zones and provide the contractor with written acceptance or rejection of the work. The Contractor shall re-clean any zone not meeting the 85 percent exposure of surface texture requirement at the contractor's expense.
5. Deposits of paint are defined as any surface deposit that can be removed by scratching the deposit with a flat sharp object (such as a pocket knife) without damaging the pavement surface. Stains are defined as materials in the pavement surface micro texture that cannot be removed without damaging the pavement surface. Stain is generally embedded in the surface of the pavement below the horizontal plane of the surface texture. The Contractor is not responsible for stain removal.

2.3 DERUBBERIZER COMPOUND

Contractor shall furnish all derubberizer compounds required to accomplish the work and shall ensure the compound meets the following minimum performance requirements.

- A. Compound shall be nonflammable, noncombustible, biodegradable, corrosion inhibiting, rapid emulsifying, rapid rinsing, hard water stable, free from objectionable odor and non-injurious to personnel involved when using good industrial hygiene practices. Compound shall also meet Federal, State of Texas and City of Houston laws, statues or ordinances pertaining to environmental protection.
- B. Compound shall not alter, harm or erode concrete or asphalt surfaces or sawed grooves, compression seals, runway lighting, expansion joints, gaskets, electrical wiring, electrical fixtures, runway paint markings, galvanized steel, grass, shrubbery or plantings. The compound shall not erode Portland cement or alter the proportions of Portland cement to aggregate in concrete runways. There shall be no degradation of the coefficient of friction beyond that of the original clean pavement.
- C. Product reference for derubberizer compound AeroKleen or equal.

2.4 MATERIAL SAFETY DATA SHEET (MSDS)

MSDS for specific derubberizer compound and for any other specific chemical products, which are used in performing the work, must be submitted with the bid. Contractor shall provide updated MSDS sheets to HAS during contract terms.

2.5 EQUIPMENT

Equipment shall be as outlined in FAA AC 150/5320-12 Contractor's friction measuring equipment shall be maintained and calibrated in accordance with OEM procedures.

2.6 WATER

HAS shall furnish sufficient water to complete the required cleaning operations from a HAS designated source, at no cost to the Contractor. The Contractor shall keep accurate records of the amount of water used with each fill-up of the equipment. Contractor shall furnish all hoses, tanks, water trucks, tools, equipment, labor, and incidentals required to receive and transport water from sources to job sites.

2.7 LIGHTING

Contractor shall be responsible for providing all required lighting for performance of work.

3.0 COORDINATION OF WORK

3.1 CALLOUT

Callout notice to Contractor shall allow a minimum of ten (10) calendar days from date work is to commence.

For derubberizing approximate square footage to be performed per callout by Airport is as follows:

- IAH: 400,000 square feet
- HOU: 400,000 square feet
- EFD: 100,000 square feet

Contractor shall coordinate its rubber removal activities with HAS. HAS shall have access to and the right to inspect all work performed by the Contractor during the course of the Contract.

3.2 SITE AVAILABILITY

IAH and HOU

Generally, airfield pavements will be made available to Contractor between the hours of 11:00 p.m. (2300 hours) and 6:00 a.m. (0600 hours) seven (7) days per week. However, specific work times will be directed by HAS.

EFD

Specific work times will be directed by HAS.

3.3 ASSIGNMENT OF STAGING/LAY DOWN AREAS

Upon receipt of notice to start work, Contractor will be assigned a staging or lay-down area at each airport for Contractor's equipment and materials. While in use, those areas shall be maintained in a clean and orderly condition, and upon completion of services shall be restored to their original condition.

3.4 WEATHER LIMITATIONS FOR DEREUBBERIZING

No work shall be performed when the temperature is below 40 degrees Fahrenheit or during conditions of high winds and/or severe weather. When notified by HAS that a severe weather warning has been issued, Contractor shall take immediate action to tie down or otherwise secure all of Contractor's equipment and materials. Contractor shall be prepared to take such action at all times when performing services under this Contract.

3.5 PRE-PERFORMANCE CONFERENCE

Prior to commencement of each performance of work on site, a Pre-Performance Conference will be held for the purpose of discussing the various aspects of the work and requirements under this contract. The Contractor or its authorized representative and any subcontractor(s) shall be required to attend the Pre-Performance Conference.

3.6 REPORTS

The Contractor shall provide documentation of services as they are performed at each airport. Contractor shall submit reports in a format acceptable to HAS. As a minimum, documentation shall indicate the following:

- Airport name and runway number
- Assessment of surface conditions before and after derubberizer operations
- Assessment of any other contaminants observed on runway

4.0 SPECIAL REQUIREMENTS

4.1 SECURITY AND BADGING for Houston Airport System

- A. All on-site personnel of Contractor, including subcontractors, who perform services under the Agreement, are required to undergo a fingerprint-based criminal history records check. Fingerprints are collected at the Airport Badging office and submitted electronically for investigation. Costs for the fingerprint-based criminal history records check are reflected in the cost of the badge. Contractor shall also provide at its sole cost any special clearances that may be required by the FAA. Contractor shall conform to all HAS and FAA security directives, rules, and regulations.
- A. Contractor shall obtain HAS security badges for its personnel performing services on-site, including subcontractors. On-site personnel shall wear identification badges at all times while on Airport property. *Currently, the cost of badges for access to restricted areas at IAH and HOU is \$45.00. The cost of badges required for work in non-restricted areas is \$6.00 at IAH and HOU. The cost of all badges at EFD is currently \$6.00.* The cost of such badges, which is subject to change, is the responsibility of Contractor, including replacements thereof. Contractor personnel losing badges will be charged for replacement badges at the then current rate.
- B. Contractor acknowledges that fines or penalties may be assessed by the FAA as a result of Contractor's non-compliance with the provision of 14 CFR §107, entitled "Airport Security" as may be amended from time to time. Any fines or penalties assessed against HAS which are attributable to Contractor's or its subcontractor's non-compliance with 14 CFR §107 must be reimbursed to HAS by Contractor within ten (10) days of receipt of written notice from HAS that the FAA has issued a penalty.

4.2 AIR OPERATIONS AREA (AOA) POLICY

The AOA includes areas within secured perimeters in which aircraft operate. This area includes all runways, ramps, taxiways, and aprons. Contractor's personnel and equipment shall not be allowed within the AOA unless authorized by DOA and escorted by authorized City personnel. Contractor shall not move any equipment onto or within the AOA (i.e. from lay-down area to runway each night or from runway to lay-down area at the end of work activity period) without City escort. In the event that Contractor personnel cross-runways without Air Traffic Control Tower approval, the employee(s) shall be immediately removed from the job site and shall not be allowed to return to work at any City airport.

4.3 RADIO COMMUNICATIONS

Contractor shall provide VHF radios to maintain communications with Air Traffic Control Towers at IAH, HOU and EFD. Frequencies will be provided to Contractor by HAS.

4.4 HAZARDOUS SUBSTANCES AND OSHA COMPLIANCE

- A. No goods, merchandise or material shall be kept or stored by Contractor at the Airport, which are explosive or hazardous. Nothing shall be done in the performance of this Contract, which will increase the rate of or suspend any insurance policy or coverage of Authority.
- B. Contractor certifies that all work practices, procedures, materials, equipment, etc., used in the performance of this Contract meet all occupational Safety and Health Administration (O.S.H.A) requirements.

In case of an emergency, the Director may order Contractor to terminate work and clear the area of personnel and equipment. Contractor shall comply to such an order with all possible haste.

5.0 ADDITIONAL WORK

5.1 OTHER WORK/SERVICES

Within the general scope of his Agreement, Other Work Services may be required to meet desired conditions and/or provide related services not covered in the Basic Services of the Agreement. Contractor shall perform the Other/Work Services specified below after Houston Airport System authorizes such services in writing, by issuing an Other Service Request (OSR) describing the scope and cost.

Labor and Materials for Other Work/Services are provided at rates specified in the Fee Schedule. For work for which no rates are specified, Contractor shall provide labor and materials at a rate agreed to by the parties. Contractor shall submit copies of purchase orders and invoices for materials and equipment for Other Work/Services evidencing Contractor's acquisition costs. Contractor shall maintain proper accounting procedures to facilitate City audit of Contractor's expenses.

5.2 PERFORMING OTHER WORK/SERVICES

Other Work/Services shall be performed in accordance with all provisions of this Agreement and any special provisions issued with the OSR.

- A. Before issuing an OSR, Houston Airport System will first issue a written notice to Contractor detailing the specific Other Work/Services to be performed by Contractor.
- B. In response to any such written notice, Contractor shall provide Houston Airport System with a written proposal. The proposal must include a description of the services to be performed, applicable labor rates, estimated labor hours, performance schedule, total estimated cost, and any other requirements set forth in the written notice to Contractor.
- C. Upon receipt of Contractor's proposal, Houston Airport System has the options to reject Contractor's proposal, reject Contractor's proposal and require resubmission with revised or additional information, or issue an OSR. Should Houston Airport System reject Contractor's proposal and require resubmission, Contractor shall resubmit a modified proposal.
- D. Upon approval by Houston Airport System of the modified proposal, an OSR will be issued. Contractor shall commence performance as stated in the OSR. Contractor shall diligently work to completion in accordance with the terms and conditions of this Agreement and the approved proposal.
- E. Labor costs must not exceed the rate stated in the Fee Schedule. However, when the Other Work/Services are performed by an on-site crew in conjunction with their regular duties, Contractor shall not receive additional compensation for labor.

- F. When chargeable Other Work/Services have been completed, a copy of the approved OSR must accompany the monthly invoice.
- G. In the case of emergency service/equipment, Contractor may perform Other Work/Services upon the verbal approval of the Director. However, during the next business day, Houston Airport System shall reduce to writing their oral understanding relating to the Emergency Service Request.

6.0 SERVICE CREDITS

It is agreed that time is of the essence in this Contract and each runway serviced shall be completed within two (2) workdays after start of Work. If Contractor fails to complete the runway within the specified time, the Contractor agrees that the HAS may deduct from the Contractor's invoice for said Work the sum of Five Hundred Dollars (\$500.00) per day as liquidated damages for each calendar day elapsing beyond said specified time. The amount of this deduction is to cover additional expenses due to the failure of the Contractor to complete the Work within the time specified and such expenses are not to be considered as penalties. HAS reserves the right to proceed with all other remedies allowed by law and this Paragraph in no way restricts the HAS's right of choice of actions under this Contract.

7.0 PAYMENT TO THE CONTRACTOR

- A. For the performance of this Contract in strict accordance with these specifications, the HAS shall pay to the Contractor. On invoice, the amount due for the Work acceptably completed. Acceptability of work shall be determined solely by the HAS.
- B. The Contractor shall submit to the HAS an invoice for any services [performed by the Contractor under this Contract within 30 days after the completion of the cleaning and friction testing performance. The HAS shall, thereafter, certify the correctness of such invoice and after such certification the HAS shall pay to the Contractor, by check, the amount so certified. No certification or [payment shall, at any time, preclude the HAS from showing that such certification or payment was incorrect or from recovering any money paid in excess of that due hereunder.
- C. All work shall be scheduled with the HAS representative and shall be accomplished during the hours scheduled. The HAS has the right to order Work to be performed during both regular and non-regular hours in accordance with the Bid schedule. No payment for services shall be payable by the HAS for any performance for which the Contractor fails to complete all the scheduled Contract Work as specified, or fails to obtain an approved Work Schedule prior to beginning Work on a visit. However, the HAS may agree to Contractor's failure to provide the services as specified was beyond the Contractor's reasonable control or was otherwise approved by and/or in the best interest of the HAS.
- D. The Contractor shall be compensated, after each performance, at the unit Bid price per square foot for the total square feet of runway pavement from which the rubber has been properly been removed and pre- and post- friction testing has been completed and cleaned as specified herein, less any applicable service credits.

Payment shall be based on actual measurement of the area properly cleaned. No payments will be made for areas where excess rubber remains on the pavement or the areas was not properly cleaned as determined by the HAS. Furthermore, if more than 10% of a single runway touchdown area fails to achieve the proper degree of removal or is not cleaned as specified, no payment will be made for any part of that runway touchdown area. The HAS will not be required to provide the Contractor additional runway access time to redo failed areas.

8.0 Additions & Deletions:

The City, by written notice from the Director or City Purchasing Agent to the Contractor, at any time during the term of this contract, may add or delete like or similar equipment, locations and/or services to the list of equipment, locations and/or services to be performed. Any such written notice shall take effect on the date stated in the notice from the City. Equipment, locations and/or services added will be subject to the contract services and charges or rates as an item already specified in the fee schedule. In the event the additional equipment, locations and/or service is not identical to any item already under contract, the charges therefore will then be the Contractor's normal and customary charges or rates for the equipment, locations and/or services classified in the fee schedule.

9.0 ESTIMATED QUANTITIES NOT GUARANTEED

The estimated quantities specified herein are not a guarantee of actual quantities, as the City does not guarantee any particular quantity of runway rubber removal, friction testing, and miscellaneous airfield paint removal services during the term of this contract. The quantities may vary depending upon the actual needs of the user Department. The quantities specified herein are good faith estimates of usage during the term of this contract. Therefore, the City shall not be liable for any contractual agreements/obligations the Contractor enters into based on the City purchasing/requiring all the quantities specified herein.

10.0 WARRANTY OF SERVICES

- a) *Definitions:* "Acceptance" as used in this clause, means the act of an authorized representative of the City by which the City assumes for itself, approval of specific services as partial or complete performance of the contract.

"Correction" as used in this clause, means the elimination of a defect.

- b) Notwithstanding inspection and acceptance by the City or any provision concerning the conclusiveness thereof, the Contractor warrants that all services performed under this contract will, at the time of acceptance, be free from defects in workmanship and conform to the requirements of this contract. The City shall give written notice of any defect or nonconformance to the Contractor within a one-year period from the date of acceptance by the City. This notice shall state either (1) that the Contractor shall correct or re-perform any defective or non-conforming services at no additional cost to the City, or (2) that the City does not require correction or re-performance.
- c) If the Contractor is required to correct or re-perform, it shall be at no cost to the City, and any services corrected or re-performed by the Contractor shall be subject to this clause to the same extent as work initially performed. If the Contractor fails or refuses to correct or re-perform, the City may, by contract or otherwise, correct or replace with similar services and charge to the Contractor the cost occasioned to the City thereby, or make an equitable adjustment in the contract price.
- d) If the City does not require correction or re-performance, the City shall make an equitable adjustment in the contract price.

EXHIBIT "C"

EQUAL EMPLOYMENT OPPORTUNITY

1. The contractor, subcontractor, vendor, supplier, or lessee will not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, or age. The contractor, subcontractor, vendor, supplier, or lessee will take affirmative action to ensure that applicants are employed and that employees are treated during employment without regard to their race, religion, color, sex, national origin, or age. Such action will include, but not be limited to, the following: employment; upgrading; demotion or transfer; recruitment advertising; layoff or termination; rates of pay or other forms of compensation and selection for training, including apprenticeship. The contractor, subcontractor, vendor, supplier or lessee agrees to post in conspicuous places available to employees, and applicants for employment, notices to be provided by the City setting forth the provisions of this Equal Employment Opportunity Clause.
2. The contractor, subcontractor, vendor, supplier, or lessee states that all qualified applicants will receive consideration for employment without regard to race, religion, color, sex, national origin or age.
3. The contractor, subcontractor, vendor, supplier, or lessee will send to each labor union or representatives of workers with which it has a collective bargaining agreement or other contract or understanding, a notice to be provided by the agency contracting officer advising the said labor union or worker's representative of the contractor's and subcontractor's commitments under Section 202 of Executive Order No. 11246, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
4. The contractor, subcontractor, vendor, supplier, or lessee will comply with all provisions of Executive Order No. 11246 and the rules, regulations, and relevant orders of the Secretary of Labor or other Federal Agency responsible for enforcement of the equal employment opportunity and affirmative action provisions applicable and will likewise furnish all information and reports required by the Mayor and/or Contractor Compliance Officer(s) for purposes of investigation to ascertain and effect compliance with this program.
5. The contractor, subcontractor, vendor, supplier, or lessee will furnish all information and reports required by Executive Order No. 11246, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to all books, records, and accounts by the appropriate City and Federal Officials for purposes of investigations to ascertain compliance with such rules, regulations, and orders. Compliance reports filed at such times as directed shall contain information as to the employment practice policies, program, and work force statistics of the contractor, subcontractor, vendor, supplier, or lessee.
6. In the event of the contractor's, subcontractor's, vendor's, supplier's, or lessee's non-compliance with the non-discrimination clause of this contract or with any of such rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part, and the contractor, subcontractor, vendor, supplier, or lessee may be declared ineligible for further City contracts in accordance with procedures provided in Executive Order No. 11246, and such other sanctions may be imposed and remedies invoked as provided in the said Executive Order, or by rule, regulation, or order of the Secretary of Labor, or as may otherwise be provided by law.
7. The contractor shall include the provisions of paragraphs 1-8 of this Equal Employment Opportunity Clause in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order No. 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontractor or purchase order as the contracting agency may direct as a means of enforcing such provisions including sanctions for noncompliance; provided, however, that in the event the contractor becomes involved in, or is threatened with litigation with a subcontractor or vendor as a result of such direction by the contracting agency, the contractor may request the United States to enter into such litigation to protect the interests of the United States.
8. The contractor shall file and shall cause his or her subcontractors, if any, to file compliance reports with the City in the form and to the extent as may be prescribed by the Mayor. Compliance reports filed at such times as directed shall contain information as to the practices, policies, programs, and employment policies and employment statistics of the contractor and each subcontractor.

EXHIBIT "D"

MWBE SUBCONTRACT TERMS

Contractor shall ensure that all subcontracts with MWBE subcontractors and suppliers are clearly labeled "THIS CONTRACT IS SUBJECT TO BINDING ARBITRATION ACCORDING TO THE TEXAS GENERAL ARBITRATION ACT" and contain the following terms:

1. _____ (MWBE subcontractor) shall not delegate or subcontract more than 50% of the work under this subcontract to any other subcontractor or supplier without the express written consent of the City of Houston's Affirmative Action Director ("the Director").
 2. _____ (MWBE subcontractor) shall permit representatives of the City of Houston, at all reasonable times, to perform (1) audits of the books and records of the subcontractor, and (2) inspections of all places where work is to be undertaken in connection with this subcontract. Subcontractor shall keep such books and records available for such purpose for at least four (4) years after the end of its performance under this subcontract. Nothing in this provision shall affect the time for bringing a cause of action nor the applicable statute of limitations.
 3. Within five business days of execution of this subcontract, Contractor (prime contractor) and Subcontractor shall designate in writing to the Director an agent for receiving any notice required or permitted to be given pursuant to Chapter 15 of the Houston City Code of Ordinances, along with the street and mailing address and phone number of such agent.
 4. As concluded by the parties to this subcontract, and as evidenced by their signature hereto, any controversy between the parties involving the construction or application of any of the terms, covenants or conditions of this subcontract shall, on the written request of one party served upon the other or upon notice by Director served on both parties, be submitted to binding arbitration, under the Texas General Arbitration Act (Tex. Civ. Prac. & Rem. Code Ann., Ch. 171 -- "the Act"). Arbitration shall be conducted according to the following procedures:
 - a. Upon the decision of the Director or upon written notice to the Director from either party that a dispute has arisen, the Director shall notify all parties that they must resolve the dispute within thirty (30) days or the matter may be referred to arbitration.
 - b. If the dispute is not resolved within the time specified, any party or the Director may submit the matter to arbitration conducted by the American Arbitration Association under the rules of the American Arbitration Association, except as otherwise required by the City's contract with American Arbitration Association on file in the Office of the City's Affirmative Action Division.
- Upon submittal of the matter to arbitration each party shall pay all fees required by the American Arbitration Association and sign a form releasing the American Arbitration Association and its arbitrators from liability for decisions reached in the arbitration.
- In the event the American Arbitration Association no longer administers Affirmative Action arbitration for the City, the Director shall prescribe alternate procedures as necessary to provide arbitration by neutrals in accordance with the requirements of Chapter 15 of the Houston City Code of Ordinances.
- e. All arbitrations shall be conducted in Houston, Texas, unless the parties agree to a different location.

EXHIBIT "F"
Contractor's Certification Of No Safety Impact Positions
In Performance Of A City Contract

I, _____
(Name)(Print/Type) **(Title)**

as an owner or officer of _____ (Contractor) have authority to bind the Contractor with respect to its bid, and I hereby certify that Contractor has no employee safety impact positions as defined in §5.18 of Executive Order No. 1-31 that will be involved in performing this City Contract. Contractor agrees and covenants that it shall immediately notify the City's Director of Personnel if any safety impact positions are established to provide services in performing this City Contract.

Date

Contractor Name

Signature

Title

CONTRACTOR'S CERTIFICATION OF NON-APPLICATION OF
CITY OF HOUSTON DRUG DETECTION AND DETERRENCE PROCEDURES
FOR CONTRACTORS

I, _____ as an
(NAME) **(PRINT/TYPE)**

owner or officer of _____ (Contractor) have authority to bind the Contractor with respect to its bid, and I hereby certify that Contractor has fewer than fifteen (15) employees during any 20-week period during a calendar year and also certify that Contractor has no employee safety impact positions as defined in 5.18 of Executive Order No. 1-31 that will be involved in performing this City Contract. Safety impact position means a Contractor's employment position involving job duties that if performed with inattentiveness, errors in judgment, or diminished coordination, dexterity, or composure may result in mistakes that could present a real and/or imminent threat to the personal health or safety of the employee, co-workers, and/or the public.

DATE

CONTRACTOR NAME

SIGNATURE

TITLE

EXHIBIT "G"
DRUG POLICY COMPLIANCE DECLARATION

I, _____ as an owner or officer of
(Name) (Print/Type) (Title)

(Name of Company) (Contractor or Vendor)

have personal knowledge and full authority to make the following declarations:

This reporting period covers the preceding 6 months from _____ to _____, 20____.

_____ A written Drug Free Workplace Policy has been implemented and employees notified.
Initials The policy meets the criteria established by the Mayor's Amended Policy on Drug Detection and Deterrence (Mayor's Policy).

_____ Written drug testing procedures have been implemented in conformity with the Mayor's
Initials Drug Detection and Deterrence Procedures for Contractors, Executive Order No. 1-31. Employees have been notified of such procedures.

_____ Collection/testing has been conducted in compliance with federal Health and Human
Initials Services (HHS) guidelines.

_____ Appropriate safety impact positions have been designated for employee positions
Initials performing on the City of Houston contract. The number of employees in safety impact positions during this reporting period is _____.

_____ From _____ to _____ the following test has occurred
Initials (Start date) (End date)

	Random	Reasonable Suspicion	Post Accident	Total
Number Employees Tested				
Number Employees Positive				
Percent Employees Positive				

_____ Any employee who tested positive was immediately removed from the City worksite
Initials consistent with the Mayor's Policy and Executive Order No. 1-31.

_____ I affirm that falsification or failure to submit this declaration timely in accordance with
Initials established guidelines will be considered a breach of contract.

I declare under penalty of perjury that the affirmations made herein and all information contained in this declaration are within my personal knowledge and are true and correct.

(Date)

(Typed or Printed Name)

(Signature)

(Title)

EXHIBIT "H"

FEES AND COSTS

YEAR ONE

Runway Rubber Removal and Pre-and Post-Friction Testing	\$0.0642 per square foot
--	--------------------------

Miscellaneous Airfield Paint Removal	\$1.00 per square foot
--------------------------------------	------------------------

YEAR TWO

Runway Rubber Removal and Pre-and Post-Friction Testing	\$0.0642 per square foot
--	--------------------------

Miscellaneous Airfield Paint Removal	\$1.00 per square foot
--------------------------------------	------------------------

YEAR THREE

Runway Rubber Removal and Pre-and Post-Friction Testing	\$0.0642 per square foot
--	--------------------------

Miscellaneous Airfield Paint Removal	\$1.00 per square foot
--------------------------------------	------------------------

YEAR FOUR (OPTION YEAR ONE)

Runway Rubber Removal and Pre-and Post-Friction Testing	\$0.0642 per square foot
--	--------------------------

Miscellaneous Airfield Paint Removal	\$1.00 per square foot
--------------------------------------	------------------------

YEAR FIVE (OPTION YEAR TWO)

Runway Rubber Removal and Pre-and Post-Friction Testing	\$0.0642 per square foot
--	--------------------------

Miscellaneous Airfield Paint Removal	\$1.00 per square foot
--------------------------------------	------------------------